

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS R. FOSTER,

Petitioner,

v.

UNKNOWN,

Respondent.

No. 1:22-cv-0866 JLT HBK (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY, AND
DIRECTING CLERK OF COURT TO CLOSE
CASE

(Doc. 10)

Petitioner Carlos R. Foster is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The assigned magistrate judge found Petitioner failed to state a cognizable claim and failed to exhaust administrative remedies. Therefore, the magistrate judge recommended the petition be dismissed on August 19, 2022. (Doc. 10.) The Findings and Recommendations were served upon Petitioner and contained notice that any objections were to be filed within 14 days after service. Petitioner has not filed objections, and the deadline to do so has expired.

In accordance with 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de novo* review of the case. Having carefully reviewed the entire matter, the Court concludes that the magistrate judge's Findings and Recommendations are supported by the record and proper analysis.

1 Having determined that Petitioner is not entitled to habeas relief, the Court now turns to
2 whether a certificate of appealability should issue. The federal rules governing habeas cases
3 brought by state prisoners require a district court issuing an order denying a habeas petition to
4 either grant or deny therein a certificate of appealability. *See* Rules Governing § 2254 Case, Rule
5 11(a). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather an
6 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
7 (2003); *see also* 28 U.S.C. § 2253(c)(1)(A) (permitting habeas appeals from state prisoners only
8 with a certificate of appealability). A judge shall grant a certificate of appealability “only if the
9 applicant has made a substantial showing of the denial of a constitutional right,” 28 U.S.C.
10 § 2253(c)(2), and the certificate must indicate which issues satisfy this standard, 28 U.S.C.
11 § 2253(c)(3). In the present case, the Court finds that reasonable jurists would not find the
12 rejection of Petitioner’s claims to be debatable or conclude the petition should proceed further.
13 Thus, the Court **ORDERS**:

- 14 1. The Findings and Recommendations issued on August 19, 2022 (Doc. 10), are
15 **ADOPTED** in full.
- 16 2. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED** without prejudice.
- 17 3. The Court declines to issue a certificate of appealability.
- 18 4. The Clerk of the Court is directed to close the case.

19
20 IT IS SO ORDERED.

21 Dated: **October 26, 2022**


UNITED STATES DISTRICT JUDGE